IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

Bail Appl..No. 4730 of 2007()

(CRIME NO.146/2007 OF ADHUR POLICE STATION)

PETITIONER: ACCUSED:

1. MAJEED P.A., AGED 28, POUVAL VEEDU,
   POUVAL, MOOLIYAR P.O.

2. ABDUL KHADER P.B., S/O.ABDULLAKUNHI,
   AGED 43, POUVAL VEEDU, MOOLIYAR.

3. SIDHIQ P.A., C/O.ABDULLA, AGED 39,
   POUVAL VEEDU, MOOLIYAR.

4. SUNESH P.A., S/O.ABDUL RAHIMAN,
   POUVAL VEEDU, MOOLIYAR. P.O.

5. MUNEER P.A., S/O.MUHAMMED,
   AGED 30 , POUVAL VEEDU, MOOLIYAR. P.O.

6. ASHARAFF (APPU),
   S/O.ABDUL KHADER,
   POUVAL VEEDU, MOOLIYAR. P.O.

7. FIZAL N.B., S/O.MOHAMMED N.A,
   AGED 26, NELLIKKAD VEEDU, MOOLIYAR P.O.

8. IBRAHIM.M.P., S/O.ABDULRAHIMAN,
   AGED 35, MOOLIYAR.

9. KUNJUKRISHNAN.K., S/O.KUNJAKKAN P.,
   AGED 62, POUVAL VEEDU, MOOLIYAR P.O.

BY ADV. SRI.SOJAN MICHEAL

RESPONDENTS:

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STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No.4730 of 2007

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Dated this the 6th day of August, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegation inter alia, under Section 452 IPC. That is the only non bailable offence alleged. The crux of the allegations against the petitioners is that they along with about fifty others, who were members of unlawful assembly of persons, attacked the premises of the defacto complainant, who was engaged as a worker in a travel agency. The alleged incident took place on 14.07.07. The petitioners belong to the CPM. The defacto complainant belongs to the IUML. There is a case and a counter case registered on the basis of the same incident. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the allegations raised are false. The owner of the travel agency had defrauded many people and collected amounts by making them believe that he would arrange visas for them. There was demand for return of money. Exaggerated and false allegations are raised about that incident, it is submitted.

3. The learned Public Prosecutor opposes the application. It was a case of organized attack on the premises. There is absolutely no

circumstance justifying invocation of the extraordinary equitable discretion under Section 438, submits the learned Public Prosecutor.

4. I find merit in the opposition by the learned Public Prosecutor. There are no features suggesting the need for invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This is a fit case where the petitioner must appear before the learned Magistrate and seek regular bail in the ordinary and normal course. I have no reason to assume that the learned Magistrate would not consider the application for regular bail on merits, in accordance with law and expeditiously. Every court must do the same.

5. In the result, this petition is dismissed. I may however, hasten to observe that if the petitioners appear before the Investigating Officer or the learned Magistrate and apply for bail,after giving sufficient prior notice to the Prosecutor, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

sj